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Human Rights Committee

Communication No. 1984/2010

**Views adopted by the Committee at its 114th session
(29 June–24 July 2015)**

<i>Submitted by:</i>	Evgeny Pugach (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	13 March 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 September 2010 (not issued in a document form)
<i>Date of adoption of Views:</i>	15 July 2015
<i>Subject matter:</i>	Right to freedom of expression; right of peaceful assembly
<i>Procedural issues:</i>	State party's lack of cooperation; exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of expression; peaceful assembly
<i>Articles of the Covenant:</i>	19 (2) and 21
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)



Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (114th session)

concerning

Communication No. 1984/2010*

Submitted by: Evgeny Pugach (not represented by counsel)
Alleged victim: The author
State party: Belarus
Date of communication: 13 March 2010 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 15 July 2015,

Having concluded its consideration of communication No. 1984/2010, submitted to the Human Rights Committee by Evgeny Pugach, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1. The author is Evgeny Pugach, a national of Belarus, born in 1984. He claims to be a victim of a violation by Belarus of his rights under articles 19 (2) and 21 of the International Covenant on Civil and Political Rights.¹

The facts as presented by the author

2.1. On 30 July 2009, the author sought the permission of the Minsk City Executive Committee to hold a peaceful picket on 22 August 2009 aimed at drawing citizens' attention to the issue of homeless animals, protest against the cruel treatment of animals and express disagreement with the methods of work of the new director of the State enterprise, City Fauna, which is in charge of collecting homeless animals. In the application, he specified that approximately 50 persons would participate in the picket from 3 p.m. to 6

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

¹ The Optional Protocol entered into force for the State party on 30 December 1992.

p.m. and that he wished to hold the picket at a pedestrian square in front of the building housing City Fauna on 42 Gurskovo Street in Minsk.

2.2. On 14 August 2009, the Minsk Executive Committee refused to authorize the picket, noting that the gathering at the indicated location would hinder the work of City Fauna and two other businesses located in the same area.

2.3. On 7 September 2009, the author filed an appeal against the decision of the Minsk City Executive Committee before the Moscow District Court of Minsk claiming a violation of his rights to freedom of expression and peaceful assembly as guaranteed by the Constitution of Belarus and articles 19 and 21 of the International Covenant on Civil and Political Rights. On 1 October 2009, the court considered the decision of the Minsk City Executive Committee to be in compliance with the provisions of the Law on Mass Events (1997) and rejected the author's appeal.

2.4. On 23 October 2009, the author filed a cassation appeal before the Minsk City Court, stating that the decision of the district court was unlawful and violated his rights to peaceful assembly and freedom of expression. He argued that the Executive Committee's decision to prohibit the picket on 22 August 2009 was unjustified and not necessary in a democratic society. He further noted that the district court had disregarded the photographic evidence demonstrating that holding a picket on the square at issue would not hinder the work of the enterprises nor the movement of pedestrians or transport as it was neither located next to roads nor crossed by footpaths. On 19 November 2009, the Minsk City Court upheld the district court's decision of 1 October 2009 and dismissed the author's complaint.

2.5. The author did not pursue the matter further by filing a complaint with the Supreme Court of Belarus under the supervisory review procedure, as he considered that remedy to be ineffective. In his view, only a complaint under cassation proceedings entailed a re-examination of a case.

The complaint

3.1. The author claims that the refusal to allow him to organize a picket arbitrarily restricted his freedom of expression in violation of article 19 (2) of the Covenant because it deprived him of the opportunity to attract citizens' attention to the issue of homeless animals and prevented him from expressing his disagreement with the methods of work of the State enterprise, City Fauna.

3.2. The author also claims that his right to peaceful assembly was restricted in violation of article 21 of the Covenant, as the imposed restriction was based on unfounded assumption that the picket he intended to organize would disturb the work of nearby businesses. He maintains that the authorities did not give any justification as to why the restriction was necessary in a democratic society in the interest of national security or public order, for the protection of public health and morals or the protection of the rights and freedoms of others.

State party's observations on admissibility

4.1. By note verbale of 6 January 2011, the State party expressed, with regard to the present communication and several other communications before the Committee, its concern about, inter alia, unjustified registration of communications submitted by individuals under its jurisdiction who, it considers, have not exhausted all available domestic remedies, including appealing to the Prosecutor's Office for supervisory review of a judgement having the force of *res judicata*, in violation of article 2 of the Optional Protocol. The State party submits that the present communication and several other communications were registered in violation of the provisions of the Optional Protocol; that

there are no legal grounds for the State party to consider those communications; and that any decision taken by the Committee on such communications will be considered invalid. It further states that any references in that connection to the Committee's long-standing practice are not legally binding on it.

4.2 By letter of 19 April 2011, the Chair of the Committee informed the State party that, in particular, it was implicit in article 4 (2), of the Optional Protocol to the Covenant that a State party must provide the Committee with all the information at its disposal concerning any communication submitted to it. The Chair requested the State party to submit further observations as to the admissibility and the merits of the case. He also informed the State party that, in the absence of its observations on the communication at hand, the Committee would proceed with the examination of the communication based on the information available to it. On 30 September 2011, the State party was again invited to submit its observations on the admissibility and merits of the communication.

4.3 By note verbale of 5 October 2011, the State party submits, with regard to the present communication, that it believes that, inter alia, there are no legal grounds for its consideration, insofar as the communication was registered in violation of article 1 of the Optional Protocol. It maintains that all available domestic remedies have not been exhausted as required by article 2 of the Optional Protocol, since no appeal was filed with the Prosecutor's office for a supervisory review.

4.4 On 25 October 2011, the State party was again invited to submit its observations on the admissibility and merits of the communication. It was informed that, in the absence of further information, the Committee would examine the communication based on the information available on file.

4.5 In a note verbale dated 25 January 2012, the State party submits that upon becoming a party to the Optional Protocol, it had agreed, under article 1 thereof, to recognize the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State party of any rights protected by the Covenant. It notes, however, that that recognition was undertaken in conjunction with other provisions of the Optional Protocol, including those establishing criteria regarding petitioners and the admissibility of their communications, in particular articles 2 and 5. The State party maintains that, under the Optional Protocol, States parties have no obligation to recognize the Committee's rules of procedure nor its interpretation of the provisions of the Optional Protocol, which could only be effective when done in accordance with the Vienna Convention on the Law of Treaties. It submits that, in relation to the complaint procedure, States parties should be guided first and foremost by the provisions of the Optional Protocol, and that references to the Committee's long-standing practice, methods of work and case law are not subjects of the Optional Protocol. It also submits that any communication registered in violation of the provisions of the Optional Protocol will be viewed by the State party as incompatible with the Optional Protocol and will be rejected without comments on the admissibility or merits, and any decision taken by the Committee on such rejected communications will be considered by its authorities as "invalid". The State party considers that the present communication as well as several other communications before the Committee were registered in violation of the Optional Protocol.

Issues and proceedings before the Committee

The State party's lack of cooperation

5.1 The Committee notes the State party's assertion that there are no legal grounds for consideration of the author's communication, insofar as it was registered in violation of the provisions of the Optional Protocol; that it has no obligation to recognize the Committee's

rules of procedure nor the Committee's interpretation of the provisions of the Optional Protocol; and that any decision taken by the Committee on the present communication will be considered "invalid" by its authorities.

5.2 The Committee recalls that under article 39 (2) of the Covenant, it is empowered to establish its own rules of procedure, which States parties have agreed to recognize. It further observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and art. 1 of the Optional Protocol). Implicit in a State's adherence to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination thereof, to forward its Views to the State party and the individual (art. 5 (1) and (4)). It is incompatible with those obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.² It is up to the Committee to determine whether a communication should be registered. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring beforehand that it will not accept the Committee's determination on the admissibility or the merits of the communication, the State party is violating its obligations under article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.³

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With regard to the requirement set out in article 5 (2) (b) of the Optional Protocol, the Committee notes that the author did not file a complaint with the Supreme Court of Belarus under the supervisory review procedure as he considered that remedy to be ineffective. In that connection, the Committee recalls its jurisprudence⁴ in which it has stated that filing requests for supervisory review to the president of a court directed against court decisions which have entered into force and depend on the discretionary power of a judge constituted an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case. In the present case, the State party has not shown, however,

² See, inter alia, communication No. 869/1999, *Piandiong et al. v. the Philippines*, Views adopted on 19 October 2000, para. 5.1.

³ See also communications No. 1949/2010, *Kozlov et al v. Belarus*, Views adopted on 25 March 2015, paras 5.1 and 5.2; No. 1226/2003, *Korneenko v. Belarus*, Views adopted on 20 July 2012, paras. 8.1 and 8.2; and No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, paras. 5.1. and 5.2.

⁴ Communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, para 7.4; No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para 8.3; Nos. 119-1920/2009, *Protsko and Tolchin v. Belarus*, Views adopted on 1 November 2013, para. 6.5; No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility adopted on 26 July 2011, para. 6.2; No. 2021/2010, *E.Z. v. Kazakhstan*, decision of inadmissibility adopted on 1 April 2015, para. 7.3.

whether and in how many cases petitions to the president of the Supreme Court for supervisory review procedures were applied successfully in cases concerning the rights to freedom of expression and peaceful assembly. The Committee further notes that the State party has challenged the admissibility of the communication on the grounds of non-exhaustion of domestic remedies as the author has not appealed to the Prosecutor's Office under the supervisory review procedure. The Committee recalls its jurisprudence, according to which a petition for supervisory review to a Prosecutor's Office, allowing to review court decisions that have taken effect does not constitute a remedy which has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.⁵ Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee considers that the author has sufficiently substantiated his claims under articles 19 (2) and 21 of the Covenant for the purposes of admissibility. It declares the communication admissible with regard to those provisions of the Covenant and proceeds to its examination on the merits.

Consideration of merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 The issue before the Committee is whether the prohibition to hold a picket on 22 August 2009 with the aim of drawing the public's attention to the issue of homeless animals, protesting against the cruel treatment of animals and expressing disagreement with the methods of work of the State enterprise, City Fauna, constituted a violation of the author's rights under articles 19 and 21 of the Covenant.

7.3 The Committee recalls that article 19 (2) of the Covenant requires States parties to guarantee the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print. The Committee refers to its general comment No. 34 (2011) on freedoms of opinion and expression, in which it states that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society and constitute the foundation stone for every free and democratic society.⁶

7.4 The Committee also notes that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right, being essential for the public expression of one's views and opinions and it is indispensable in a democratic society.⁷ This right includes the right to organize and participate in a peaceful assembly and manifestation with the intent to support or disapprove one or another particular cause.

7.5 The Committee notes that the refusal to permit the holding of a picket aimed at drawing public attention to the issue of homeless animals, protesting against the cruel treatment of animals and expressing disagreement with the methods of work of the State enterprise, City Fauna, amounted to a restriction on the author's right to impart information and his freedom of assembly. The Committee must verify whether the restrictions imposed

⁵ See, inter alia, communication No. 1992/2010, *Sudalenko v. Belarus*, Views adopted on 27 March 2015, para. 7.3.

⁶ See the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, para. 2.

⁷ See communication No. 1948/2010, *Turchenyak et al. v. Belarus* (see footnote 3), para. 7.4.

on the author's rights in the present communication are justified under article 19 (3) and the second sentence of article 21, of the Covenant.

7.6 The Committee recalls that the rights set out in article 19 (1) of the Covenant are not absolute, and that article 19 (3) provides for certain restrictions, but only as are provided by law and necessary: (a) for respect of the rights or reputation of others; or (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. It observes that any restrictions on the exercise of the rights provided for in article 19 (2) must conform to the strict test of necessity and proportionality and must be directly related to the specific need on which they are predicated.⁸

7.7 The Committee further notes that no restrictions may be placed on the right guaranteed under article 21, other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.⁹ When a State party imposes restrictions with the aim of reconciling an individual's right to assembly and the aforementioned interests of general concern, it should be guided by the objective to facilitate the right, rather than seek to impose unnecessary or disproportionate restrictions on it. The State party is thus under the obligation to justify the restriction imposed on the right protected under article 21 of the Covenant.¹⁰

7.8 In that connection, the Committee notes that the State party has not submitted observations on the merits of the present communication and that, in those circumstances, due weight must be given to the author's allegations. The Committee notes that the author was refused permission by the authorities of Minsk City to hold a picket at the location of his choice on 22 August 2009, which restricted his rights to freedom of assembly and to impart his opinions, together with others, about homeless animals and the methods of work of the State enterprise, City Fauna. In this connection, it notes that the national authorities refused to allow the author to hold the picket at the location of his choice and, thus, restricted his right to express his concerns together with others, solely on grounds that the picket would hinder the work of the State enterprise, City Fauna, other businesses in the area as well as automobile traffic. However, in the light of the information provided by the author, the Committee notes that the authorities have not explained how, in practice, a picket held in a pedestrian zone outside the premises of the respective State enterprise would hinder the work of said enterprise as well as the movement of traffic; nor has it explained how the restrictions imposed on the author's rights to freedom of expression and of peaceful assembly were justified under article 19 (3) and the second sentence of article 21 of the Covenant.¹¹ The Committee recalls that it is for the State party to demonstrate that the restrictions imposed were necessary in the case in question.¹²

7.9 In the circumstances of the present case, and in the absence of any other pertinent information from the State party to justify the restriction for purposes of article 19 (3) and the second sentence of article 21 of the Covenant, the Committee concludes that the author's rights under article 19 (2) and article 21 of the Covenant were violated.

⁸ Committee's general comment No. 34 (see footnote 6 above), para. 22; see also, for example, *Turchenyak et al. v. Belarus* (see footnote 3 above), para. 7.7.

⁹ See, for example, communication No. 1929/2010, *Lozenko v. Belarus*, Views adopted on 24 October 2014, para. 7.6.

¹⁰ See, for example, *Turchenyak et al. v. Belarus* (see footnote 3 above), para. 7.4.

¹¹ *Ibid.*, para. 7.8.

¹² *Ibid.*

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by Belarus of Mr. Pugach's rights under articles 19 (2) and 21 of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under the obligation to provide the author with an effective remedy, including reimbursement of any legal costs incurred by the author, together with adequate compensation. The State party is also under the obligation to take steps to prevent similar violations in the future. In that regard, the Committee reiterates that the State party should review its legislation, in particular, the Law on Mass Events of 30 December 1997, as it has been applied in the present case, with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.¹³

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in Belarusian and Russian in the State party.

¹³ See, for example, *Sekerko v. Belarus* (see footnote 4 above), para. 11; *Turchenyak et al. v. Belarus* (see footnote 3 above), para. 9; communication No. 1790/2008, *Govsha, Syritsa and Mezyak v. Belarus*, Views adopted on 27 July 2012, para. 11.